Massachusetts UR Agent Meeting
April 16, 2003

Minutes

UR Agent Attendees:
Allmerica Financial Corp.; Arrow Mutual Liability Insurance; Atlantis Rehab Corp.; Baystate Health System, Inc.; Berkley Administrators of CT; BME Gateway; Buckler, Irvin & Graf; Bunch & Assoc.; Cambridge Integrated Services Group, Inc.; Central Mutual Insurance Co.; Charter Mgmt. Review Services; Chubb Services Corp.; Concentra Integrated Services, Inc.; CorVel Corp.; Crawford & Co.; EOSCOMP, LLC; First Health; FutureComp; Gates McDonald; Genex Services; GUARDCo; Health Direct, Inc.; Health International; Health Net Plus Managed Care Services; Hartford; Injury Medical Review; Human Resources Department Commonwealth of MA; Intracorp; KEMPER (NATLSCo, Inc.); Liberty Mutual Group (LMMC); Managed Benefit Services, Inc.; Marriott International Inc.; Medirate, Inc.; MedInsights; National Grid; Northern General Services; NSTAR; Quality Review Assoc.; Raytheon Co.; Sedgwick CMS; Sargent & Assoc.; Stephenson & Brook; Travelers Medical Management Services, Inc.; Windham Group; Zurich Insurance Co.

Absent:
CCN Managed Care Services; Cook & Co.; Forte, Inc.; COMPIQ, LLC; Procura Management, Inc.; Stop & Shop Supermarket Co.

Other Attendees:
Donna Ward Associate (DWA)

New Complaint/Grievance Procedures

- The Department thanked all agents for complying with the new department standard to include the DIA complaint procedure on the introductory letter sent to injured workers from UR agent.
- The Department reminded agents they are required to forward a copy of any and all internal complaints/grievances they have received along with the resolutions within 10 days of receiving them.
- The Department informed agents that the Office of Health Policy (OHP) will contact agents on a bi-annual basis by mail and asked them to list the number of internal complaints received, reviewed, and forwarded to the DIA per the new requirement effective November 12, 2002.

UR Site Information - Single, Multi, Mega

- The Department thanked all agents for complying with the new requirement to provide the information requested in the February 27, 2003 memorandum relating to the structure of approved utilization review organizations in Massachusetts.
- This information is similar to what URAC requires in its National Accreditation Application and will be incorporated into the Department's approval application for all new agents and will be required for ongoing audit procedures.

Letters

- **Introductory Letter -** the Department reminded agents that an introductory letter is required and should be sent to the injured worker when the utilization review process commences. The introductory letter is sent only at the beginning of utilization review and only needs to be sent to the injured worker. If the UR agent chooses to send the introductory letter to the ordering provider that is OK as well, but it is not required.

- **UR Card** - if the UR agent is responsible for distribution of UR cards the card should be sent with the introductory letter. If the agent is not responsible for card distribution, they should reference the card in the letter, and provide the name and number of the individual responsible for sending the card and direct the injured worker to this person it the card has not been received.
- **Approval Letter** - approval letters are required for all health care services. Although the letter was always required in the UR application on file, the requirement was not consistently enforced. The reason for the current enforcement is related to the complaint process. When the Department is investigating a complaint it is imperative that we know when and what guideline was used by the agent for approval. In accordance with the regulation, if the guideline changes, that change constitutes a new utilization review.
- Agents were also reminded that you must label letters in accordance with Department requirements for consistency. The signature on the letter should be representative of the individual responsible for the determination. If this is not the case, you are required to identify the individual responsible for the determination in the body of the letter.
- The Department also reminded agents that case managers should not be signing utilization review letters. If a nurse is splitting their time between utilization review and case management, this should be indicated within the application. However, when the nurse is conducting utilization review, he/she should be signing the letter and identifying his/herself as the utilization reviewer. All agents were reminded they cannot conduct case management under the regulation 452 CMR 6.0. All signatures should also include the credentials of the individual completing the review.
- All letters must be addressed to the injured worker with a cc to the ordering provider and/or representative.

Timelines

- Agents were informed timelines will be strictly enforced in accordance with 452 CMR 6.0. Although this may not have been the practice in the past the OHP is currently mandated to enforce the regulation.
- If the regulation requires an interpretation the Department will provide that interpretation and to set a consistent standard.
- Agents were reminded that the regulation 452 CMR 6.0 does not include a reconsideration process. Therefore, for prospective review the Department requires the agent to describe their process for the request of additional information. The agent must be specific in describing how much time they allow for the request and receipt of all of the information necessary to complete the review being conducted. If the required information is not received in accordance with the agent's procedure, the agent must issue an adverse determination, including appeal procedures. If the ordering practitioner or injured employee requests an appeal, the next review conducted must be a school-to-school appeal level review. Because the appeal process may be costly to the agent it is recommended that the agent allow ample time and have a process that attempts to work with the provider to receive the information. Agents may also want to develop a letter as part of their procedure that is sent to the ordering provider describing the process and the end (adverse determination), if the information is not received. However, minimally the agent must allow two business days before issuing an adverse determination due to non-receipt of medical information.
- Agents were reminded that concurrent review includes a review of all health care services, both inpatient and outpatient. The review must be completed one day prior to implementation. This review does not allow for business day notification, therefore, the agent is responsible to make determinations within the timeline, which come into the office during business hours (9AM to 5PM) Monday through Friday. A question was asked regarding Friday requests and how are they determined within the timeline? The Department suggested that agents develop a procedure for monitoring ongoing reviews that would include a call prior to the expiration date to assess the need for ongoing care and request the information that will be required to make the determination to avoid a violation of the regulation. This procedure should be included in your application process on file with the Department.

Appeal Level Reviews:

- It has come to the Department's attention through the complaint process that some agents are not conducting school-to-school reviews on appeal. The Department reminded agents that in accordance with 452 CMR 6.0 appeal level reviews must be conducted by a same-school review, not a same specialty reviewer. The definition of school means a grouping of practitioners as defined by their professional degree. Schools include, but are not limited to, physical and occupational therapy, chiropractic, osteopathic, allopathic, nursing, and dentistry.

- Practitioner means a person who is a physician or dentist, but also includes the language of Chapter 233: Section 79 G: the words "physician" and "dentist" shall not include a person who is not licensed to practice as such under the laws of the jurisdiction within which such services were rendered, but shall include chiropodists, chiropractors, optometrists, osteopaths, physical therapists, podiatrists, psychologists, and other medial personnel licensed to practice under the laws of the jurisdiction within which such services were rendered.
- The Department reminded agents that the current standard for conducting expedited appeals in accordance with the Department's interpretation of the regulation 452 CMR 6.04 (1) is that agents shall conduct expedited appeals of all prospective (prior to) and concurrent (ongoing) reviews of any health care service. Many agents expressed their concern of this interpretation. Agents were encouraged to express their concerns in writing to the OHP and the Department will ask its legal department to review the issue and provide a written response.
- Agents were informed that they can request a written legal opinion from the Department on any standard that the OHP implements regarding the regulations 452 CMR 6.0 and 7.4.

Case Management

- The OHP reminded all agents that only utilization review is regulated and mandated under the workers' compensation statute in Massachusetts. Therefore, to avoid violations of the statute and to avoid potential violations of workers' rights under the law, and potential conflict of interest, the Department requirement is that utilization review staff shall not conduct case management of the same claim they are providing case management. During the investigation of complaints, OHP is observing a disregard on the part of approved utilization review agents for this standard and the statute. While the Department is aware that other states allow and encourage case management for workers' compensation, this is not the case in Massachusetts at the present time, the exception being Preferred Provider Arrangements, which are regulated under 452 CMR 6.0. Agents are reminded that only the state legislature has the authority to change the statute. Agents who would like to recommend changes to the statute are encouraged to contact the Massachusetts State Legislature.

HIPAA and Privacy

- Agents were reminded of the privacy provision under 452 CMR 6.04 which requires agents to comply with all applicable laws (HIPAA) to protect the confidentiality of medical records, and where necessary, obtain a medical release.
- The OHP passed out provisions of the HIPAA law which the Department believes ***may*** pertain to "covered entities" regarding workers' compensation. These provisions include the disclosures for workers" compensation purposes including the minimum necessary standard, and the business associate standard. The OHP believes that although workers' compensation has some exclusion under the law, there are sections of the minimum disclosure standards that may apply to workers' compensation. The OHP is recommending that approved agents review those sections in detail and contact the Department of Health and Human Services for additional information as needed. The OHP will keep agents appraised of any information that we receive pertaining to workers' compensation and the HIPAA regulations.

Texas Workers' Compensation Non-enforcement Suit

- The Office of Health Policy's legal department has recently been made aware of a pending law suit in Texas against workers' compensation carriers, utilization review agents, and the Texas Workers' Compensation Commission (TWCC). The suit against TWCC relates to their non-enforcement of the law. The suit against carriers and utilization review companies relates to patterns in the way they are denying claims based on medical necessity. Allegations include:
    - Adjusters denying claims based on their own opinions and without requesting proper utilization review
    - Utilization review agents recommending denials in the absence of the providers' documentation and in disregard for the standards for determining medical necessity as defined by Texas law.
    - A total disregard for by state agencies, carriers, and review agents for workers' compensation laws.

The OHP takes this type of litigation seriously and will work to avoid similar litigation is Massachusetts. We are providing this information to utilization review agents as part of our commitment to a collaborative and educational approach in providing information to agents to also decrease their risk in providing utilization review services. Please feel free to contact Deborah Di Bella with questions regarding this information at (617) 727-4900 x425.

Other

1. Agents discussed the need to form a workgroup to propose changes in the regulations to the State Legislature. Since the Department can not be involved in this proposal process, we have agreed to provide the name of the UR agent who has volunteered to chair the group. Any UR agent who is interested should contact Nancy Saltzman Murphy at Kemper (NATLSCO, Inc). Nancy can be reached at (800) 800-7660 x2346 or by email nancy.saltzman@kemperinsurance.com.

2. Department Standards/Requirements: There was a lengthy discussion regarding the new requirements of the Department and whether the Department has the authority to mandate such requirements. The OHP reminded agents as utilization review and workers' compensation change so will the standards and requirements of the Department regarding the utilization review and quality assessment program. The Department is required to enforce the regulations 452 CMR 6.0 and can be held accountable for their failure to complete this mandate. While we encourage utilization review agents to communicate their concerns regarding the regulations to the Legislature, and the Department, we remind agents that the Department does not have the authority to make amendments to the current statute. Only the State Legislature has this authority.

3. Further, many of the current changes that utilization review agents have questioned are intended to move the Massachusetts UR/QA Program toward the standards of the national accreditation organization URAC, without agents having to incur the expense of URAC accreditation. However, the OHP belies the quality of our program in Massachusetts should provide the same external oversight, and public accountability that URAC believes they ensure through their accreditation process. The URAC utilization review standards are widely recognized and used as the basis for many states' utilization review laws and regulations. The OHP standards are the same as URAC: "to ensure that appropriately trained clinical personnel conduct and oversee the utilization review process, that a reasonable and timely appeals process is in place that comports with the requirements of 452 CMR 6.0, and that medical decisions are based on Massachusetts treatment guidelines or other valid clinical criteria". According to URAC their accreditation process is designed to be collaborative and educational. The OHP supports this type of process and would like to foster this type of collaboration between the OHP and agents of the Commonwealth of Massachusetts. We respect and appreciate the job you do and we encourage you to communicate with the OHP regarding the UR/QA process. We will do our best to address your concerns.